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OFFICE OF PETITIONS

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Hiroyuki Nitta et al.

Serial No.: 09/883,210

Filed: June 19, 2001

For: Semiconductor Device Having A Wiring Layer Of Damascene Structure And Method
For Manufacturing The Same

Group Art Unit: 2815

Examiner: J. Nguyen

Atty. Dkt. No. 01701.00086

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OFFICIAL

Inquiry Under 37 CFR 1.137 bCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Office of Petitions

The undersigned certifies that this paper of 13 pages (1 page
+ 12 page attachment) is being faxed to 703 872 9306.Christopher R. Glembocki
Reg. No. 38,800

Sir:

Applicants submitted the attached Request to Withdraw the Holding of Abandonment and Petition to Revive Unintentional. Applicants received a decision (attached) on the Request to Withdraw the Holding of Abandonment. However, Applicants have not received a response on the Petition to Revive Unintentional.

Applicants have been charged the fee for the Petition to Revive (\$1300) on February 3, 2003, but have not received the decision.

Please inform the undersigned when a decision on the Petition will be mailed.

Please charge any fee associated with the filing of this paper to our Deposit Account No. 19-0733.

Respectfully submitted,

By:

*Christopher R. Glembocki*Christopher R. Glembocki
Registration No. 38,800BANNER & WITCOFF, LTD.
1001 G Street, N.W., 11th Floor
Washington, D.C. 20001
(202) 824-3000

Dated: May 17, 2004

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TECHNOLOGY CENTER 2800
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PATENT DESIGN B&W Ref. D1701.00086 Date 1/30/03
 HAND CARRY Group/Section
Serial Patent No. 091823-210 Appl. Ser. Bldg. 100
Inventor Name Inventor Client Surface
Title Semiconductor Device Having The Unique Layer
~~of Diamondlike Structure And Method for~~

The following has been received in the U.S. Patent and Trademark Office on the date stamped hereon:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Application pp Spec. including # of Claims _____ | <input type="checkbox"/> Sequence Listing : <input type="checkbox"/> Odekte <input type="checkbox"/> Paper |
| (# of Independent Claims _____) <input type="checkbox"/> Abstract | <input type="checkbox"/> Amendment : <input type="checkbox"/> Response : OA ad |
| <input type="checkbox"/> Drawings : <input type="checkbox"/> Formal <input type="checkbox"/> Informal | <input type="checkbox"/> Person for Extension of Time and _____ |
| # of distinct sheets _____ Pgs. _____ | <input type="checkbox"/> CPA <input type="checkbox"/> RCE <input type="checkbox"/> w/End of Time : OA ad 01/26 |
| <input type="checkbox"/> Declaration/Power of Attorney : <input type="checkbox"/> Executed <input type="checkbox"/> Unexecuted | <input type="checkbox"/> Request for Approval of Drawing Changes |
| <input type="checkbox"/> Assignment w/PTO Cover Sheet | <input type="checkbox"/> Notice of Appeal & Fee |
| <input type="checkbox"/> IDS w/PTO 1449 <input type="checkbox"/> References <input type="checkbox"/> w/Fee | <input type="checkbox"/> Brief : <input type="checkbox"/> Appeal & Fee <input type="checkbox"/> Recd. JAN 30 2003 |
| <input type="checkbox"/> Preliminary Amendment | <input type="checkbox"/> Request for Oral Hearing |
| <input type="checkbox"/> Priority Claim (Foreign or U.S. Provisional) B&W # _____ | <input type="checkbox"/> Issue Fee <input type="checkbox"/> Advance Patent Copies (Ordered _____) |
| <input type="checkbox"/> Notice of Allowance ad | |
| <input type="checkbox"/> Amendment under 37 CFR 1.312 | |
| <input type="checkbox"/> Request for Certificate of Correction | |
| <input type="checkbox"/> Transmittal <input type="checkbox"/> Fee Transmittal w/Auth. to Charge Deposit Acc. | |
| <input type="checkbox"/> Certificate of Mailing | |
| <input type="checkbox"/> Check _____ for \$ _____ | |
| <input type="checkbox"/> Petition <input type="checkbox"/> Withdrawn | |
| <input type="checkbox"/> Examiner's Holding of _____ | |
| <input type="checkbox"/> Assignment _____ | |
| <input type="checkbox"/> Alternative A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I <input type="checkbox"/> J <input type="checkbox"/> K <input type="checkbox"/> L <input type="checkbox"/> M <input type="checkbox"/> N <input type="checkbox"/> O <input type="checkbox"/> P <input type="checkbox"/> Q <input type="checkbox"/> R <input type="checkbox"/> S <input type="checkbox"/> T <input type="checkbox"/> U <input type="checkbox"/> V <input type="checkbox"/> W <input type="checkbox"/> X <input type="checkbox"/> Y <input type="checkbox"/> Z | |
| <input type="checkbox"/> Response to Restriction/Election Requirement | |

(25)

*Examiner's Holding of _____
Assignment _____
Alternative A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
To Receive (unintentional)*

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 1300)

Complete if Known

Application Number	09/883,210
Filing Date	June 19, 2001
First Named Inventor	Hiroyuki Nitta et al.
Examiner Name	Joseph Nguyen
Art Unit	2815
Attorney Docket No.	001701.00088

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METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Other None
 Deposit Account

Deposit Account Number

19-0733

Deposit Account Name

Banner & Witcoff, Ltd.

The Commissioner is authorized to: (check all that apply)

 Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1)

(\$ 0)

2. EXTRA CLAIM FEES

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			0	X	0
			0	X	0

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	" Reissue independent claims over original patent
1205 18	2205 9	" Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$ 0)

** or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for expedited reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	1300
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1480 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17 (q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR § 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$ 1300)

SUBMITTED BY		Complete if applicable			
Name (Print/Type)	Christopher R. Glembocki	Registration No. Attorney/Agent)	38,800	Telephone	202 824 3000
Signature	<i>Christopher R. Glembocki (S#38800)</i>			Date	January 30, 2003

WARNING: Information on this form may become public. Credit card information should not be included on this form.

Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231

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Paper No. 9

BANNER & WITCOFF
 1001 G. Street N.W.
 Suite 1100
 Washington, DC 20001

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BANNER & WITCOFF
Noted

JUL -2 2003

In re Application of
 Hiroyuki Nitta et al.
 Application No. 09/883,210
 Filed: June 19, 2001
 Attorney Docket No. 01701.00086

DECISION ON PETITION

This is a decision on the petition filed January 30, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn, or in the alternative, to revive the application under 37 C.F.R. 1.137(b)¹.

The petition to withdraw the holding of abandonment is DENIED.

A restriction requirement and an election of species requirement were mailed February 7, 2002, setting a one-month shortened statutory period for filing a response. On March 5, 2002, applicant responded to the restriction requirement, but failed to elect a species for examination purposes. The March 5, 2002 response was held non-responsive and another Office action was mailed March 22, 2002, setting a one month shorten statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed January 17, 2003.

Petitioner asserts that a response was timely filed by facsimile transmission on April 19, 2002 together with a preliminary amendment. To support the assertion, petitioner submitted 1) a copy of a response entitled "Response to Election Requirement" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 2) a

¹This decision addresses the petition to withdraw the holding of abandonment only. A decision on the petition under 37 C.F.R. § 1.137(b) will be addressed by the Deputy Commissioner for Patent Examination Policy.

Application No. 09/883,210
On Petition

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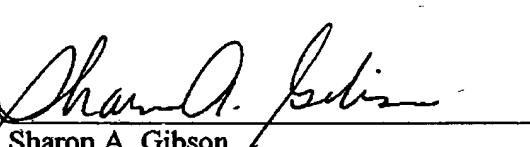
copy of a paper entitled "Amendment" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 3) a copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002.

The file record does not include the originally submitted papers.

A review of the record does not show evidence that the election was in fact sent by way of facsimile transmission with a report of successful transmission thereof. The copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002 does not support timely facsimile transmission of the "Response to Election Requirement." Further, the sending unit's report shows transmission of three pages, not enough pages to support sending of the election also.

The petition does not satisfy the conditions for accepting a response filed using a certificate of transmission under 37 C.F.R. § 1.8(a) but lost after being received by the USPTO. Accordingly, the petition is denied.

The application filed is being forwarded to the Deputy Commissioner for Patent Examination Policy, Office of Petitions, for consideration of the Petition to Revive Unintentional.



Sharon A. Gibson
Technology Center 2800 Director
Semiconductors, Electrical and Optical
Systems and Components